

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MYRON SPEARS,)	CASE NO. 1:07 CV 616
)	
Petitioner,)	JUDGE JAMES S. GWIN
)	
v.)	
)	<u>ORDER</u>
MICHELE EBERLIN,)	
)	
Respondent.)	

This habeas petition was dismissed on April 20, 2007, on the ground that it was patently untimely and that, in any event, the principles set forth in United States v. Booker, 543 U.S. 220 (2005) and Blakely v. Washington, 542 U.S. 296 (2004), relied upon by petitioner, do not apply retroactively in collateral habeas proceedings. Humphress v. United States, 398 F.3d 855 (6th Cir. 2005).

On May 1, 2007, petitioner filed a Motion to Alter or Amend Judgment, asserting that Cunningham v. California, 127 S.Ct. 856 (2007) abrogates Humphress. Cunningham, however, was not a habeas proceeding, but rather a direct appeal, and is therefore inapplicable.

Accordingly, the Motion to Alter or Amend is denied. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal

from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

Dated: June 29, 2007

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE